IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13101 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASANTBHAI RAMANLAL PATEL

Versus

GUJARAT POLLUTION CONTROL BOARD

Appearance:

1. Special Civil Application No. 13101 of 2000

MR HL RAVAL for Petitioner No. 1

MR KV GADHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 23/12/2003

ORAL JUDGEMENT

Heard learned advocate MR HL RAVAL for Petitioner and MR KV GADHIA for Respondent. In t his petition, the

petitioner is challenging the award made by the labour court, Ahmedabad in Reference No. 452 of 1989 dated 12th October, 2000 wherein the reference of the petitioner workman was rejected by the labour court. The petitioner had raised an industrial dispute against the order of termination which ultimately referred to the labour court for adjudication and the labour court has rejected the reference of the petitioner workman.

Learned advocate Mr. Raval appearing for the petitioner submits that the labour court has committed gross error in coming to the conclusion that the workman has not completed 240 days continuous service and, therefore, provisions of section 25F of the ID Act, 1947 are not applicable to the facts of the present case. According to his submission, the labour court has also erred in not properly appreciating the documentary evidence on record; the labour court has ignored certain relevant facts emerging from the record and, therefore, this court should interfere with the award in question.

On the other hand, learned advocate Mr. K.V.Gadhia appearing for the respondent has submitted that the labour court was right in appreciating the evidence on record; the labour court was right in concluding that the workman has not completed one year's continuous service; the workman has not completed 240 days continuous service with the respondent and, therefore, according to him, the labour court was right in concluding that the workman has not completed 240 days continuous service within twelve months. Thus, according to his submissions, there is no substance in this petition and the same is required to be dismissed.

This Court has called the original record and papers from the labour court concerned and has perused the award in question alongwith the record of the labour court. The workman was appointed with effect from 30th April, 1982 and each month, he was being engaged by the respondent for number of days and with breaks in the service, he remained in service upto 7th November, 1985. Before the labour court, certain documents were produced by the petitioner as well as the respondent and the oral evidence was led before the labour court by both the parties. The findings given by the labour court are to the effect that according to the appointment order, the workman was being engaged as and when the work was required. The labour court also recorded finding that he has not completed 240 days continuous service. However, the fact remains that the petitioner who was engaged by the respondent on 30th April, 1982 continued in service

of the respondent upto 7th November, 1985 with breaks. No doubt, strictly speaking, the respondent has not committed breach of section 25F of the ID Act, 1947. However, the fact remains while examining Exh. 16 that the workman remained in service for a period of more than eight to nine months but has not completed one year service and he also not completed 240 days service which is considered to be unfortunate situation for the workman. In view of that, the findings given by the labour court cannot be considered to be perverse or baseless. Thus, the fact remains that the petitioner worked from 1982 to 1985 with breaks and the respondent being Gujarat Pollution Control Board is having requirement of daily wage employees as and when the work is available with the respondent board. It is a corporate body which would require the service of such daily wage employee. The petitioner is having experience of at least three years of such work with the respondent and he is out of job since 1985. Therefore, considering the experience of the petition and also considering the situation of the petitioner, according to my opinion, it would be just and proper and would also met ends of justice if the respondent is directed to engage the petitioner and provide work as and when the work is required keeping in mind the seniority of the petitioner from 30th April, 1982 and accordingly preference may be given to the petitioner, if any occasion arise to have work. This would be without disturbing or interfering with the award made by the labour court.

Accordingly, without interfering with the award made by the labour court, while keeping in view the mandate of section 25-H of the Industrial Disputes Act, 1947, in such a situation, it is directed to the respondent to engage the petitioner as and when necessity arise while keeping in mind the original date of joining of the petitioner 30th April, 1982 and considering the seniority from that date and also to give him preferential treatment in the event of such necessity as he is having experience of at least about three years with intermediate breaks. Thus, as and when such necessity will arise, the respondent will invite the petitioner and will offer the work to the petitioner by giving him preferential treatment considering his experience and seniority. With these observations and directions, this petition is disposed of. Rule is made absolute in terms indicated hereinabove with no order as to costs. There shall be no order as to costs.

Dt. 23.12.2003. (H.K. Rathod,J.)
Vyas